

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

James McDonald

Plaintiff

No. C10-1952-RSL

v.

**OneWest Bank, FSB,
Northwest Trustee Services,
Mortgage Electronic Registration Systems,
Defendants.**

**[PROPOSED] ORDER
Upon Plaintiff's Motion in Limine**

Noting Date: November 16, 2012

Plaintiff's Motion in Limine came on for hearing before this Court. The Court having considered:

1. Plaintiff's Motion and Exhibits;
2. Court's File containing pleadings and filings in this matter.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

Plaintiff's Motion in Limine is hereby GRANTED as to the following items:

Evidence/Testimony to be excluded

1. Any speculation or argument about the substance of the testimony of any witness who is absent or unavailable.
2. Any reference to the existence or filing of this Motion *in limine*, or to the fact that Plaintiff has sought to exclude evidence, or to any ruling on the Motion in Limine by this Court.
3. Any suggestion, testimony, or evidence pertaining to the Freddie Mac Seller/Servicing Guide (Servicing Guide) because Chapter 50-2 of the Servicing Guide explicitly states

1 that a Master Servicing contract/agreement must exist between Freddie Mac and the
2 Seller/Service for the Servicing Guide to be applicable. The Defendants have repeated
3 throughout its filings in this case that no Master Servicing contract or agreement
4 existed presented numerous times that no such agreement exists (Exhibit 1,
5 Compilation of Responses to First Request to Produce, Exhibit 2, Email from Heidi
6 Buck, Dkt #98).

- 7 4. Any suggestion, testimony, or evidence pertaining to any and all records stored on a
8 computer or computer system owned or controlled by OneWest Bank, FSB; Indymac
9 Bank, FSB; Indymac MBS; or Indymac Mortgage Services. In Defendant OneWest's
10 Response to Plaintiff's First Set of Interrogatories, Request to Produce #7 – certified by
11 defense counsel Heidi Buck and sworn by Charles Boyle of OneWest – that no records
12 exist (Exhibit 3, OneWest's Response to Interrogatories).
- 13 5. Any testimony or declaration from any individual that has been shown to be an
14 unreliable witness in cases in other courts including.
- 15 6. Any testimony, argument or evidence based upon any order of the Office of Thrift
16 Supervision relating to the failure of Indymac Bank, FSB, as it fails to pass the
17 relevance test of FRE 401. The fact that Indymac Bank, FSB failed is of no
18 consequence to the issues at hand and would merely serve to confuse the jury.
- 19 7. Any testimony, argument or evidence based upon the Purchase and Assumption
20 Agreement of Indymac Bank, FSB by the FDIC as it fails the relevance test of FRE
21 401. There is no connection between Plaintiff's Note and this Purchase and
22 Assumption Agreement whatever; Plaintiff's Note is not identified in any known
23 exhibit or addendum attached to the Agreement. Further, the Defense has already
24

acknowledged that Indymac Bank, FSB sold the Note prior to the bank being taking over by the FDIC.

8. Any testimony, argument or evidence based upon the Master Purchase Agreement between the FDIC and OneWest. First, the Defense has already acknowledged that Indymac Bank, FSB sold the Note prior to being taken over by the FDIC. Second, the Defense has not provided any evidence that Plaintiff's Note or Loan is a part of this Master Purchase and Sale Agreement.

9. Any testimony, argument or evidence based upon the Loan Sale Agreement between the FDIC and OneWest. The Defense has already admitted that Indymac sold the Note prior to being taken over by the FDIC. Therefore this Agreement fails to pass the relevance test of FRE 401 and would only serve to deliberately confuse the jury.

10. Any testimony, suggestion, argument or evidence relating to the Servicing Business Asset Purchase Agreement between OneWest and the FDIC. The Agreement specifies that an addendum listing every loan included accompanied the Agreement, yet no authenticated addendum has been produced identifying Plaintiff's Note or Loan. Any reference or mentioning of the Servicing Business Asset Purchase Agreement between OneWest and the FDIC is irrelevant and serves only to confuse the jury.

11. Uncertified/Unauthenticated copy of the Deed of Trust

12. Uncertified/Unauthenticated of the original Note

13. Any suggestion, argument or testimony in regards to the Defense's failed claim of constructive possession.

14. Any suggestion, argument or testimony in regards to un-substantiated claims of right or holder in due course status from the sale of *certain* assets of Indymac Bank by the FDIC to OneWest. The United States Supreme Court held that the FDIC merely "steps

1 into the shoes” of the failed institution and would only assume rights that the institution
2 would have had. As Indymac Bank, FSB sold the Note to a mortgage backed security
3 prior to its failure; it would have lost all legal and equitable interest in the Note (RCW
4 62A.9-318).

5 15. Any suggestion, argument or testimony that Deutsche Bank National Trust Company
6 (DBNTC) was holding the Note for the benefit of OneWest. Not only is there no record
7 of DBNTC ever obtaining the Note but the Custodial Agreement explicitly states that
8 OneWest has no benefit to any notes released to it (Exhibit 4, Custodial Agreement).

9 16. Any suggestion, argument or testimony that MERS was acting as nominee for a
10 principal in the Assignment of Deed of Trust as the document clearly states that MERS
11 was assigning its own beneficial interest in the Deed of Trust and Note and no valid,
12 operating principal was identified in the document.

13 17. Any suggestion, argument or testimony that is slanderous or libelous of Plaintiff’s
14 character or the nature of his claims including, but not limited to, Plaintiff seeking a
15 “free house”.

16 18. Any suggestion, argument or testimony that attacks the character of Plaintiff’s counsel.

17 19. Any suggestion, argument or testimony that claims any damages or injuries suffered by
18 Plaintiff were of his own doing. It has been alleged that OneWest induced Plaintiff to
19 stop making payments on his mortgage in order to qualify for a loan modification
20 while in fact OneWest never had the authority to do so.

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3 DATED this _____ day of _____, 2012.
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Hon. ROBERT S. LASNIK
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10 Presented by:
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12 _____
Ha Thu Dao, WSBA 21793
Attorney for Plaintiff
13 787 Maynard Ave South, Seattle, WA 98104
14 Phone 727-269-9334/Fax 727-264-2447
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